

IN THE HIGH COURT OF JUDICIATE, ANDHRA PRADESH

AT HYDERBAD

MONDAY, THE TWENTYEIGHTH DAY OF APRIL,

TWO THOUSAND AND EIGHT

PRESENT

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

and

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.No.12056 of 2005

Between:

1.M.V.Anantha Lakshmi w/o M.Ram Prasad.

2.M.Ram Prasad s/o M.Venkateswara Rao.

(Both are resident of Flat No.401, Sai Residency
Apartments, P.S.Colony, Ganesh Nagar, Ramanthapur,
Hyderabad-500013.)

..Petitioners

and

1. District Collector, Ranga Reddy District,
Lakdi-ka-pul, Hyderabad.

2. Deputy Collector and Mandal Revenue Officer,
Hayatnagar Mandal, Ranga Reddy District.

..Respondents.

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Petition under Article 226 of the Constitution of India
praying that in the circumstances stated in the accompanying affidavit
the petitioners pray that this Hon'ble may be pleased to issue an
appropriate writ, order or direction more particularly one in the nature
of writ of Mandamus declaring the proceedings No.C/402/2005 dated
02-04-2005 passed by the 2nd respondent as illegal and void and
consequently direct the respondents not to interfere with possession
and enjoyment of the land of an extent of Ac.5.00 in R.S.26/Roo of
Tattiannaram village, Hayatnagar Mandal, Ranga Reddy District and
to pass such other or further orders as this Hon'ble Court may deem fit
and proper in the circumstances of the case.

Counsel for the petitioners : Sri A.Ramalingeswara Rao

Counsel for the respondents: Sri A.Satya Prasad,
Special Govt. Pleader

The Court made the following:

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Order: (Per Hon'ble Sri Justice **A.Gopal Reddy**)

Petitioners who are wife and husband filed this writ petition under Article 226 of the Constitution for issuance of Mandamus to declare the proceedings No.C/402/2005 dated 02-04-2005 passed by the Deputy Collector and Mandal Revenue Officer, Hayatnagar Mandal as illegal and void and consequently direct the respondents not to interfere with their possession and enjoyment of the land of an extent of Ac.5.00 in R.S.26/Roo of Tattiannaram village, Hayatnagar Mandal, Rangareddy District.

In the affidavit filed in support of the writ petition it is contended that the petitioners purchased 5 acres of land under four registered sale deeds dated 09-05-1995 and 10-05-1995 from the legal heirs of late D.Lingamaiah; they have been in continuous possession and the same was also mutated in their names on 18-02-1998 and pattadar pass books are also issued in their favour. After that they dug a bore well, constructed a farm house and raised mango garden in the said land. While so, the local Sarpanch interfered with their possession; then they filed W.P.No.9259 of 2002, which was disposed of on 30-10-2002 directing the respondents not to interfere with the possession of the petitioners without following due process of law by granting liberty to the respondents if the petitioners are making any preparations to change the agricultural land into residential purpose, the Sarpanch can always take appropriate action. While so, when the MRO tried to interfere with the possession O.S.No.881 of 2005 was filed before the Junior Civil Judge,

Rangareddy District seeking permanent injunction. In the said suit the 2nd respondent appeared and filed documents showing that resumption order was passed on 02-04-2005. Till then they were not aware of any notice nor the said order was communicated to them. Since C.C.No.400 of 2005 was filed for violation of orders in W.P.No.9259 of 2002, to overcome the same, the impugned order was passed. When they are in possession of the property, the 2nd respondent highhandedly demolished the farm house, which is arbitrary, illegal.

A counter affidavit has been filed by the 2nd respondent stating that Sy.No.26 total admeasuring Ac.104.36 gts. of Tattikhana village was classified as Sarkari. During the year 1961 one Sri Lingamaiah a habitant of Tattiannaram was granted agricultural land admeasuring Ac.5.00 among others under laoni rules. The said assignment is subject to G.O.Ms.No.1406 dated 25-07-1958. The fact of assignment and their subsequent possession and enjoyment are being reflected in the revenue records. During the local enquiry made by the Revenue Inspector it is noticed that during the year 1995 the above specified assigned land bearing Sy.No.26E admeasuring Ac.5.00 has been purchased by the petitioners from the legal representatives of original assignees under a registered document Nos.44 and 55 of 1995 dated 09-05-1995 and 61 and 62 of 1995 dated 10-05-1995. The said transfer is in violation of A.P. Assigned Land (Prohibition of Transfer) Act, 1977 (for short "the Act"). The legal heirs of the assignees have contravened the assignment conditions specified in G.O.Ms.No.1406 dated 25-07-1958 by executing sale deeds in favour of petitioners. Basing on the report of AMRI Form-I notice under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 (for short "the Rules") was

published in the Gram Panchayat Office of Tattikhana village. As the possessor refused to take notice, the same was pasted on the walls on 18-03-2005 before the action was initiated and accordingly resumed the land to the Government custody through the impugned order and consequently the MRO took the possession of the property.

We have heard the learned counsel for the petitioners and also Sri A.Satya Prasad, Special Government Pleader for the respondents, who also made available the original file which discloses that Form-I notice No.402/05 dated 15-03-2005 was addressed in the name of Lingamaiah, original assignee, M.V.Ram Prasad and M.V.Anantha Laxmi. The notice also discloses an endorsement that when the possessor refused to take notice, the same has been fixed on the walls on 18-03-2005 at page 175 followed by Panchanama dated 02-04-2005 where they have resumed the land and handed over to the Panchayat Secretary on the said date at page 177 of the original record.

Rule 3 of the Rules issued under G.O.Ms.No.281, Revenue (BI) dated 02-02-1978 contemplates issuance of notice in Form-I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the Act. The said notice shall be served by delivering copy to him or to some adult male member of the family at his usual place of abode or to his authorized agent, or by affixing a copy thereof at some conspicuous place of his last known place of residence or on some conspicuous part of the land acquired by him. After the expiry of fifteen days specified in the notice the District Collector or the authorized officer shall consider the representation, if any, received with reference to the said notice and pass such orders as he thinks fit and proper. It is held that the provisions of sub-Section (1) of Section 3 of the Act have been

contravened in respect of any assigned land, a copy of the order shall be communicated to the village officer for taking possession of the land and thereupon the land shall be disposed of in accordance with sub-clause (b) of clause (1) of Section 4 of the Act.

Issuance of notice, even according to the respondents, is only on 18-03-2005 and it was affixed on wall. If the same is true, the said date has to be excluded and the only after fifteen days the resumption order has to be passed. Only on passing resumption order and after communicating the said order land can be resumed. The same shall have to be communicated to the village officer for taking possession of the land. But without waiting for 15 days from the date of deemed service of notice the authorities were anxious to resume the land and passed the order on the 15th day and also Panchanama was conducted evidencing taking possession of the property which is in clear contravention of statutory Rule as referred to above. Therefore, resumption order as well as Panchanama conducted evidencing taking land are in contravention of Rule 3 of the Rules which cannot be sustainable and the same are accordingly set aside.

In view of the same, Rule is made absolute. However, liberty is granted to the respondents to take action for resumption of the land, if the petitioners contravene the provisions of Act 9/77 after following due procedure. All contentions are left open. Once the resumption order and Panchanama are set aside, petitioners who are in possession of the property shall not change the nature of the land or create any third party rights for a period of six months.

The writ petition is accordingly allowed. No costs.

A.GOPAL REDDY, J.

B.SESHASAYANA

REDDY,J

28-04-2008

Murthy

.....Registrar

//True Copy//

Section

Officer

To

1. The District Collector, Ranga Reddy District,
Lakdi-ka-pul, Hyderabad.
2. The Deputy Collector and Mandal Revenue Officer,
Hayatnagar Mandal, Ranga Reddy District.
3. Two CCs to the Special Govt. Pleader, High Court of A.P.,
Hyderabad (OUT)
4. Two CD copies.